IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5212 of 2000
WITH
SPECIAL CIVIL APPLICATION No 5276 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMRELI MUNICIPALITY

Versus

ANJU SHARMA 3RD SPECIAL LAND ACQUISITION

Appearance:

SCA NO.5212 OF 2000.

MR ND NANAVATI, SENIOR COUNSEL WITH
MR TUSHAR MEHTA for Petitioners
MR AD OZA,GOVERNMENT PLEADER for Respondent No. 1
RULE SERVED BY DS for Respondent No. 2, 7
MR BC DAVE for Respondent Nos. 3-5
MR DC DAVE for Respondent No. 6

SCA NO.5276 OF 2000

MR YN OZA, SENIOR COUNSEL WITH
MR NIRZAR S.DESAI for Petitioner.
MR AD OZA, GOVERNMENT PLEADER for Respondent No.1

MR ND NANAVATI, SENIOR COUNSEL WITH
MR TUSHAR MEHTA for Respondent Nos. 2- 3.
MR DC DAVE for Respondent No.2.

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 20/06/2000

COMMON ORAL JUDGEMENT

#. These two petitions under Article 226 of the Constitution arise out of disputed resignations of respondent nos. 3,4 and 5 in Special Civil Application No. 5212 of 2000 as Councillors of Amreli Municipality and the events that followed their resignations. For the sake of convenience I shall refer to the parties as arrayed in Special Civil Application No. 5212 of 2000.

#. The facts leading to the Special Civil Application are as follows :

#. The general election to Amreli Municipality was held in January 2000. In all, 36 Councillors were elected out which 20 belonged to Congress and 16 belonged to Bharatiya Janta Party. The first general meeting of the municipality was held on 20.1.2000 and the respondent no.3 who belonged to Congress was elected as President and the petitioner No.2 was elected as Vice President.

#. Thereafter no confidence motion was moved against the president, respondent No.3. It was put to vote at the meeting of the municipality held on 4.5.2000. Respondent Nos. 3 to 5 were not present. Motion was carried unanimously. Section 36(2) of the Act provides that the president shall cease to hold office after a period of three days from the date on which the motion is carried unless he has earlier resigned and thereupon the office held by him shall be declared to be vacant.

#. Section 42(1) of the Gujarat Municipalities Act,1963 provides interalia that when any vacancy of a President, occurs due to any reason the Chief Officer of

the municipality shall within fifteen days from the date on which the vacancy occurs give a notice thereof to the Collector. Accordingly the Chief Officer sent intimation of the vacancy to the Collector on 7.5.2000.

#. Section 42(2)(b) provides that the Collector shall call within twenty-five days from the date of the receipt of the notice a general meeting of the municipality for the election of the President and accordingly the Collector issued notice calling general meeting on 19.5.2000.

#. Section 46(c) provides that it shall be the duty of the Vice President of the Municipality to exercise the powers and perform the duties of the president pending a decision of a President. Hence, in view of this provision, the petitioner No.2, who was Vice President at the time when no confidence motion was carried against the President became In-charge President exercising the powers and performing the duties of the President pending the election of a new president.

#. According to the petitioner, in the meantime, the respondent nos.3 to 5 submitted their resignations on 12.5.2000 before the petitioner no.2 who was acting as President and he made endorsement on the resignations to the effect that though he had tried to pursuade them they had insisted on resigning and hence the resignations had been accepted.

#. On the other hand, it is the case of the respondent no.3 that he had already sent intimation to the Collector on 2.5.2000 expressing his apprehension that false resignation may be got up because of political intrigues so as to exclude him from voting at the election of the President. Similar apprehension was conveyed by respondent no.4 on 12.5.2000 and respondent no.5 on 18.4.2000.

##. The Collector also received another communication dated 15.5.2000 signed by one Shri Vajsurbhai Ravatbhai Vichhia raising dispute about genuiness of the resignations alleged to have been submitted by respondent nos. 3 to 5. On the same day the Collector purporting to exercise powers under section 35(5) of the Act made an order granting stay of the disputed resignation till further orders and fixed the hearing for deciding the issue relating to resignation on 29.5.2000.

##. The petitioners preferred Special Civil Application No. 4980 of 2000 challenging the said order passed by the Collector on 18.5.2000. The learned Single Judge before whom the petition was moved during vacation made an order directing the Collector to decide validity of the disputed resignations and pass final order by 26.5.2000 and the election of the president was ordered to be held on 29.5.2000. It appears that the petitioner no.1 had moved one Civil Application praying for modification of the dates. It is stated at the Bar that the learned Single Judge was not inclined to grant any further time and no order was made on the said Civil Application.

##. In compliance with the direction issued by this Court, the Collector recorded the statements of the parties concerned, heard their submissions and passed a speaking order on 26.5.2000 and held that the resignations had not been submitted with the consent of the Councillors in question and there was reason to believe that they were false. She, therefore, rejected their resignations as invalid.

##. It is the said order of the Collector which is under challenge in Special Civil Application No. 5212 of 2000 filed by the Amreli Municipality and the In-charge President. It was moved for admission on 29.5.2000. The learned Single Judge before whom it was moved during vacation did not stay the order of the Collector but ordered the result of the election to be kept in abeyance till final disposal of the petition. He also permitted the three councillors whose resignations were in dispute to cast their votes and directed the Presiding Officer to keep such votes in a sealed cover and/or separately and not declare the result of the election till final disposal of the petition or till further orders that may be passed in this petition. Rule was made returnable on 12.6.2000.

##. In the meantime, in compliance with the direction issued by this Court, by order dated 18.05.2000, the meeting to elect the new President was held on 29.5.2000 which was presided over by the Assistant Collector. According to the proceedings of the meeting drawn by the Assistant Collector, Jagdishbhai Govindbhai Dharajia, who is petitioner in SCA No.5276 of 2000, secured 19 votes as against 17 votes secured by petitioner no.2 in SCA

##. At that stage, a fax copy of the order passed by this Court in the present petition on 29.5.2000 was presented and accordingly it was decided not to announce the result of the election.

##. Special Civil Application No.5276 of 2000 has been filed by Jagdishbhai G.Dharajia who claims to have been elected president in the said meeting and the prayer is that he should be declared as duly elected president of the municipality.

##. Shri N.D.Nanavati, lerned Senior Advocate who appears for the petitioner in SCA No.5212 of 2000 raised a number of contentions. First he referred to the provisions of Section 35 of the Act which deals with the resignation of the President, Vice President and the Councillors.The said section reads as follows :

"35.(1)A president may resign his office by tendering his resignation in writing to the Collector. Such resignation shall take effect on the date on which it is accepted by the Collector or on the expiry of thirty days from the date of tendering the resignation,whichever event occurs earlier.

(2) A vice-president may resign his office by tendering his resignation in writing to the municipality. Such resignation shall take effect on the date on which it is accepted by the municipality or on the expiry of thirty days from the date of tendering the resignation whichever event occurs earlier.

(3) Any other councillor may resign his office by tendering his resignation in writing to the president. Such resignation shall take effect on the date on which it is received by the president.

(4) The date on which the resignation of the president took effect shall be notified in the Official Gazette.

(5) If any dispute regarding any resignation arises, it shall be referred for decision to such officer as the State Government may , by

general or special order, appoint in that behalf and the decision of such officer shall be final :

Provided that no such dispute shall be entertained after the expiry of a period of thirty days from the date on which the resignation took effect.

Provided further that such resignation shall take effect in accordance with the decision of such officer."

This provision was interpreted by this Court in the case of Shirishkumar Mayachandbhai Modi Vs.The Collector, Banaskantha District (16 GLR Pg.703). It was held that the resignation contemplated by sub-section (3) must be a genuine resignation because a forged resignation is no resignation at all in the eye of law and it is a genuine and valid resignation which takes effect on the date on which it is received by the president. However, if there is any dispute as to the genuineness or validity of a resignation of a councillor it takes effect in terms of the provisions contained in sub-section (5) of sec.35. If the person tendering the resignation challenges its genuineness or validity or anyone else challenges its genuiness or validity, the dispute can be taken for decision to the officer appointed by the State Government. It was also held that anyone who is interested in the due and proper constitution of the municipality may refer the matter to the Collector for decision unless it has already been referred to the Collector otherwise. It was observed in para 8 of the decision that after receipt of the resignation tendered by a Councillor if the President comes to know that its genuiness or validity is challenged, he should in discharge of his public duty as the president and as one who is interested in the due and proper constitution of the municipality refer the matter to the Collector for decision unless it has already been referred to the Collector. The effect that the resignation tendered by a municipal councillor takes on its receipt by the president is a tenative effect. It becomes final if no dispute is raised as to its genuineness or validity but remains tenative until such dispute, if raised, is decided. In terms of second proviso to sub-section (5) of section 35 the final effect which it takes is in accordance with the decision given by the Collector in the dispute. If the Collector records his conclusion that it was a genuine resignation,

he has to declare that the seat to which the councillor was elected has fallen vacant. If he records the conclusion that it was not a genuine resignation he shall make an order declaring that the councillor continues to be a member of the municipality.

##. Shri N.D.Nanavati, learned Senior Advocate, in particular relied on the observation made in para 10 of the said decision in which the scope of the inquiry before the Collector has been dealt with.

##. It was contended on behalf of the petitioner that in the present case the letter raising dispute was signed by a person who was not a councillor and no dispute was raised by councillors themselves. However, it appears from the order of the Collector that respondent nos. 3 and 5 had already expressed apprehension in advance that their false resignations might be forwarded and similar intimation was given by respondent No.4 on 12.5.2000 to the Collector. Shri Nanavati, after referring to the affidavits of these councillors shown by them on 16.5.2000 raised doubt about the genuineness of the letters said to have been addressed by them to the Collector. However, the Collector has referred to the letters and there is no reason for the Collector to get up such letters. Even otherwise as stated above it was held in the case of Shirishkumar Mayachandbhai Modi Vs.The Collector, Banaskantha District (16 GLR Pg.703) the dispute can be raised by anyone. Moreover, following the said decision it was held in Kasammiya Ahmedmiya Saiyed & Another Vs. K.D.Parmar, Collector, Ahmedabad and others (1988 (2) GLH [UJ] 21) that a dispute regarding the resignition of a councillor can be raised by any ordinary citizen or voter in the form of a complaint to the Collector. Hence, there is no substance in this contention.

##. Next it was contended that the intimation raising dispute must be sent to the President who in turn has to refer it to the Collector and that it cannot be raised directly before the Collector. However, there is no provision in section 35 that it cannot be raised directly before the Collector. It is pertinent to note that in Shirishkumar Mayachandbhai Modi Vs. The Collector, Banaskantha District (16 G.L.R.Pg.703) [supra] the application challenging genuineness of resignation was given to the Collector and in the other decision in the case of Kasammiya Ahmedmiya Saiyed & Another Vs. K.D.Parmar, Collector, Ahmedabad (1988(2) GLH (UJ) 21), it was held that any ordinary citizen or voter can raise

dispute in the form of a complaint to the Collector.

##. The Collector has given a number of reasons for coming to the conclusion that the resignations were not genuine and valid.

##. Shri Nanavati, learned Senior Advocate for the petitioners, assailed the said order of the Collector on a number of grounds. He submitted that the dispute has to be decided on cogent material, that proper evidence has not been recorded, that the copy of the letter raising dispute had not been supplied, that the stand of the respondent nos. 3 to 5 was inconsistent as to whether the signatures were forged or their signatures were taken on blank papers, that there was no decision in accordance with law, that burden to prove fraud lies on the respondent nos. 3 to 5, that the Collector had erred in throwing the burden of proving the presence of respondents on the petitioner, that the Collector has observed that the genuineness of signatures cannot be decided conclusively at this stage and hence the Collector has not recorded any decision. He also commented on the conduct of the Collector in passing an interim order on 15.06.2000.

##. Now the Collector had to decide the dispute within the time as directed by this Court. The Collector recorded the statements of the parties and heard submissions made on their behalf. In the circumstances, it cannot be said that there was no evidence before the Collector. The submissions made on behalf of the petitioner as recorded in the Collector's order show that the petitioners very well knew the nature of contentions raised on behalf of respondent nos. 3 to 5. Since the Collector had to decide the dispute on or before the date fixed by the Court she rightly observed that genuineness of signature cannot be decided conclusively.Even otherwise the strict rules of the Evidence Act are not applicable in such proceedings. This is not a Civil Suit which can drag on indefinitely till the evidence of handwriting expert is produced. The Collector had to take the decision on the basis of such material as was produced before him. The reasons given by the Collector cannot be said to be not relevant or not germane. In the circumstances, the ultimate conclusion recorded by the Collector cannot be said to be such that no reasonable man can come to it. Even assuming that a different conclusion on facts is possible, it will not justify interference in exercise of writ jurisdiction. The

Collector has acted bonafide and decided the dispute within the time fixed by this Court. It was also submitted that the Collector had taken a different stand in the case of resignation of another councillor. However, what is to be seen in the present case is the legality and validity of the impugned order of the Collector. The Collector's order is not vitiated for any reason.

##. The result is that the Special Civil Application No. 5212 of 2000 filed by Amreli Municipality and the In-charge President fails and is dismissed. Rule is discharged. The Special Civil Application No.5276 of 2000 filed by the candidate who, according to the proceedings of the meeting drawn up by Assistant Collector, secured majority votes, is entitled to be declared as elected. Rule is therefore made absolute in the said petition. No order as to cost in both the petitions.

##. The learned Counsel for the petitioner in Special Civil Application No. 5212 of 2000 prays that previous direction not to declare the result of the election may be continued so as to enable them to prefer appeal against this judgment. The learned Counsel for the petitioner in Special Civil Application No. 5276 of 2000 strongly and vehemently opposes the prayer. Interim direction not to declare the result of the election is ordered to continue till 3.7.2000.

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m.m.bhatt